

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENITH A'GARD,

Plaintiff,

11 Civ. 1933 (JGK)

- against -

MEMORANDUM OPINION
AND ORDER

ADA PEREZ, ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

The Court has received the attached letter from the plaintiff dated January 30, 2013. The plaintiff moves for reconsideration of this Court's Opinion and Order dated January 26, 2013. He also seeks the opportunity to file a second amended complaint. Finally, he asks for the right to appeal.

The motion for reconsideration is denied because the plaintiff has failed to point to any issue of fact or law that this Court overlooked in its Opinion and Order. Similarly, the application to file a second amended complaint is also denied. Here, the plaintiff was previously given ample opportunity to file a second amended complaint, but he failed to do so. He then waited until judgment was entered dismissing his first amended complaint before again seeking leave to amend. While leave to amend generally should be freely given when justice so requires, see Fed. R. Civ. P. 15, there is no basis to reconsider the Court's previous decision. See State Trading

Corp. of India, Ltd. v. Assuranceforeningen Skuld, 921 F.2d 409, 418 (2d Cir. 1990) ("When the moving party has had an opportunity to assert the amendment earlier, but has waited until after judgment before requesting leave, a court may exercise its discretion more exactingly."); see also In re Eaton Vance Mut. Funds Fee Litig., 403 F. Supp. 2d 310, 318 (S.D.N.Y. 2005), aff'd, Bellikoff v. Eaton Vance Corp., 481 F.3d 110 (2d Cir. 2007). Moreover, the plaintiff has failed to attach any amended complaint to his application and has not explained what he would plead that would alter this Court's Opinion and Order.

Finally, the plaintiff has the right to appeal the Judgment of the Court dated January 29, 2013. The Clerk is directed to treat the plaintiff's January 30, 2013 letter as a notice of appeal to the Court of Appeals.

SO ORDERED.

**Dated: New York, New York
February 11, 2013**

/s/
John G. Koeltl
United States District Judge